IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENJAMIN DOE, A Minor by His Parents JOSEPH AND JULIE DOE, And JOSEPH AND JULIE DOE, Individually and On Their Own Behalf v. ABINGTON FRIENDS SCHOOL, PHILIP VINOGRADOV, JODI PICKERING, and RUSSELL SHAW	: : : : : : : : : : : :	CIVIL ACTION NO. 04-4647

MEMORANDUM AND ORDER

Juan R. Sánchez, J. **February 4, 2005**

Abington Friends School ("AFS") asks this Court to rule, as a matter of law, that it is exempt from the requirements of Title III of the Americans with Disabilities Act (ADA).[1] A student and his parents (Doe) claim AFS's failure to accommodate the child's learning disabilities violated the ADA, breached a contract in bad faith, negligently inflicted emotional distress, and constituted assault and battery. For the reasons that follow, we grant AFS's Motion for Summary Judgment on the ADA claim and dismiss the remaining counts for lack of subject matter jurisdiction.

Facts

Doe was a student at AFS from September 2001 to June 2003. Prior to enrolling at AFS, Plaintiff was diagnosed with several conditions affecting his ability to learn. During Doe's first year at AFS, AFS agreed to: provide additional time to take tests, advise Doe if spelling counted, permit

[1]42 U.S.C. §§ 12181-12189 .

Doe a grid for multiplication, read test directions out-loud, and contact Doe's parents if Doe was unprepared for class. AFS refused to make other accommodations the Does requested.

The Does also allege AFS treated Doe unfairly and differently from other students, publicly humiliated him and imposed conditions on his behavior that were impossible for him to meet in light of his disabilities. The Does claim these failures violated the ADA.

Discussion

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). In a motion for summary judgment, the moving party bears the burden of proving no genuine issue of material fact is in dispute. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348 (1986). After reviewing all of the evidence in the record, the Court must draw all reasonable inferences in favor of the nonmoving party. *Id.* "This does not require a court to turn a blind eye to the weight of the evidence . . . ." *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992) (citing *Matsushita*, 475 U.S. at 586). Rather, "when the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita,* 475 U.S. at 586. The nonmoving party must "come forward with specific facts showing there is a genuine issue for trial." *Matsushita,* 475 U.S. at 587 (citing Fed.R.Civ.P. 56(e)).

A motion for summary judgment will not be denied because of the mere existence of some evidence in support of the nonmoving party. The nonmoving party must present sufficient evidence for a jury to reasonably find for them on that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the

nonmoving party, there is no genuine issue for trial." *Matsushita* 475 U.S. at 587.

Title III of the ADA states, "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182. Private schools are public accommodations under Title III of the ADA. 42 U.S.C. § 12181(7)(J). Religious, private schools however, are not. 42 U.S.C. § 12187 (stating "[t]he provisions of this title shall not apply to . . . religious organizations or entities controlled by religious organizations, including places of worship").

AFS argues it is a religious entity exempt from compliance with the ADA. Only one case, *White v. Denver Seminary*, has considered the definition of a religious entity under Title III of the ADA. 157 F. Supp. 2d 1171 (D. Colo. 2001). In *White* the Plaintiff claimed the Denver Seminary discriminated against him on the basis of disability. *Id*. The Court concluded the Seminary was a religious institution after examining the federal regulations. which provide : "[t]he ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations . . . . The test is whether the church or other religious organization operates the public accommodation, not which individuals receive the public accommodation's services." 28 C.F.R. Pt. 36, App. B. The court held the Denver Seminary was a religious organization because the school was founded by a religious organization, a majority of its board of trustees were required to be members of the founding religious organization, the school only employed individuals who subscribed to its faith and students were required to participate in a religious curriculum and attend a weekly religious ceremony. *White*, 157 F. Supp. 2d at 1174.

In other contexts, courts have found Friends schools to be religious organizations. In *Christen G. by Louise G. v. Lower Merion Sch. Dist.*, this Court held the Delaware Valley Friends School was sectarian; therefore, tuition reimbursement violated the First Amendment. 919 F. Supp. 793, 817 (E.D. Pa. 1996). Likewise, in *Christian School Assoc. v. Commonwealth, Dep't of Labor & Industry*, the court found Germantown Friends School and Frankford Friends School were not only "under the control of their affiliated churches, but . . . so closely affiliated with a church that . . . each might even be classified as a 'church' and therefore be exempt from taxation . . . ." 55 Pa. Commw. 555, 566, 423 A.2d 1340, 1346 (Pa. Commw. Ct. 1980). Doe points us to no case in which a court has concluded a Friends school is not a religious organization.

Doe argues control is a factual test and wishes to conduct discovery to scrutinize the daily operations of AFS to determine whether it is controlled by a religious organization. The evidence on the record, an affidavit from the school's headmaster, Thomas Price, shows that AFS is controlled by a religious institution. AFS is owned and controlled by Abington Monthly Meeting of the Religious Society of Friends. Price Affidavit ¶ ¶ 2-5. The Abington Monthly Meeting owns the school grounds and school buildings. Price Affidavit ¶ 4. The Monthly Meeting, through its School Committee, ensures the school adheres to Quaker principles, manages AFS's financial welfare and selects the head of the school, who manages daily school operations. Price Affidavit ¶ 4. Students who attend AFS are taught Quaker principles and values and required to attend weekly Quaker meetings. Price Affidavit ¶¶ 5-6. The Pennsylvania Department of Education has classified AFS as religiously affiliated. Price Affidavit ¶ 8. These facts are sufficient to conclude AFS is, as a matter of law, a religious organization. *See White*, 157 F. Supp. 2d at 1174. Religious organizations are exempt from the ADA,28 C.F.R. Pt. 36, App. B; therefore, AFS is exempt from compliance with

Title III of the ADA and Count I of Doe's complaint fails. Having found Doe's ADA claim fails, we decline to exercise jurisdiction over the remaining claims. 28 U.S.C. § 1367. Accordingly, we enter the following:

ORDER

And now this 4th day of February, 2005, it is hereby ORDERED that Defendant's Motion to Dismiss (Document 8) is GRANTED.

BY THE COURT:

\s\ Juan R.Sánchez
Juan R. Sánchez, J.